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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,434	04/20/2004	J. Charles Headrick	H040 1112.1	5364

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EXAMINER

EPPES, BRYAN L

ART UNIT	PAPER NUMBER
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3609

MAIL DATE	DELIVERY MODE
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06/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/828,434

Applicant(s)

HEADRICK ET AL.

Examiner

Bryan Eppes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 13-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 & 18-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 August 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/28/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-12 and 18-21, drawn to a ridge vent, classified in class 52, subclass 198.
 - II. Claims 13-17, drawn to a method of manually separating a ridge vent, classified in class 52, subclass 745.16.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the method (invention II) requires folding the top panel along a line, whereas the product (invention I) may be separated or used without the step of folding and weakening the structure along a line. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.
3. During a telephone conversation with Steve Kerr on June 4, 2007 a provisional election was made without traverse to prosecute the invention of a ridge vent, claims 1-12 and 18-21. Affirmation of this election must be made by applicant in replying to this

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Office action. Claims 13-17 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Priority

Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows: This application is claiming the benefit of prior-filed nonprovisional application Nos. 09/825,033 and 09/412,909 under 35 U.S.C. 120, 121, or 365(c). Copendency between the current application and the prior applications are required. Since the applications are not copending, the benefit claim to the prior-filed nonprovisional applications is improper. Applicant is required to delete the reference to the prior-filed applications from the declaration, unless applicant can establish copendency between the applications.

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 35 "small tabs" (Pg.19 Line 1). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application

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must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "49" has been used to designate both a "tear line" and "score" (Pg.25 Line 21). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 47 (Fig. 7). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if

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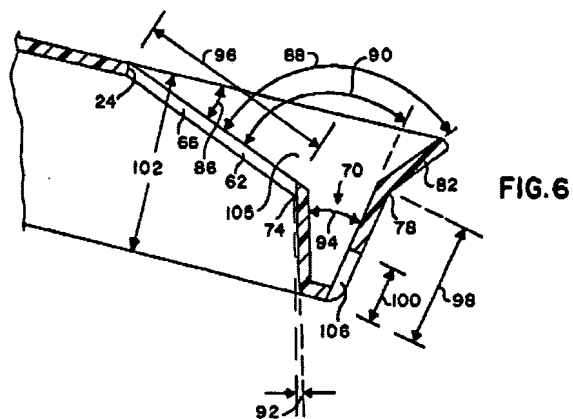
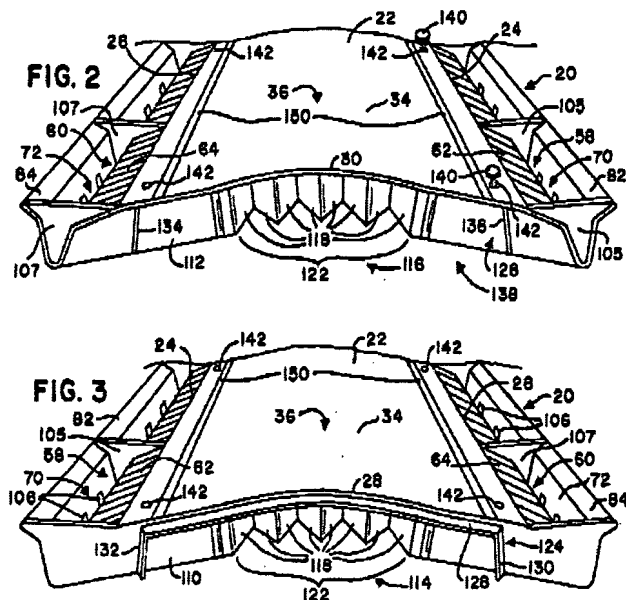
only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

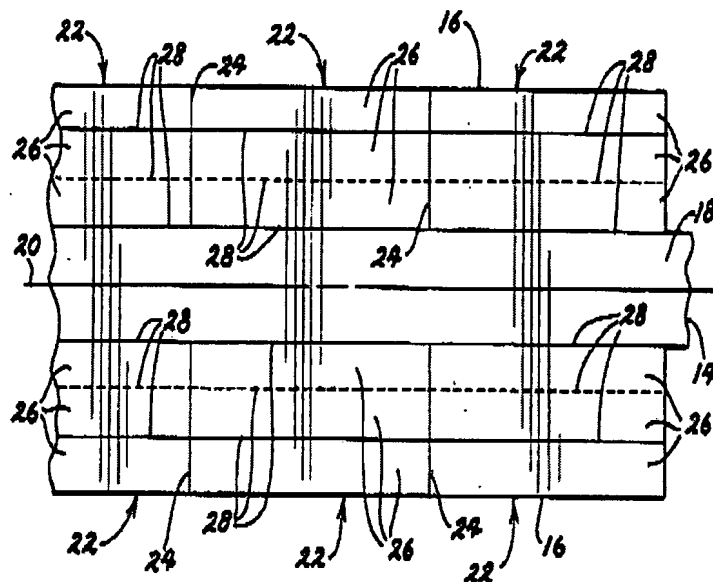
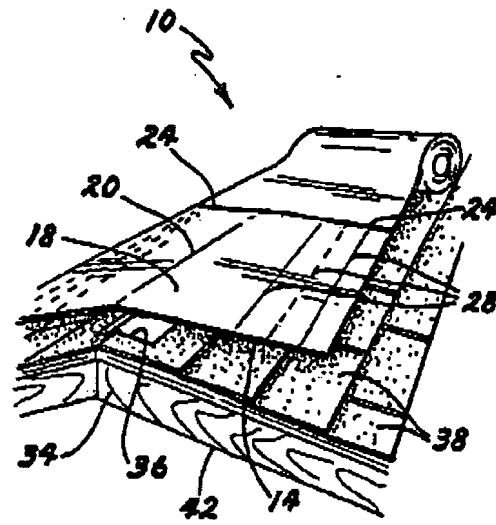
3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 7-10, 18, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (U.S. Patent 5,772,502) in view of Morris (U.S. Patent 5,651,734).



a. Claim 1. Smith discloses a ridge vent with an elongated flexible top panel (Column 2 Line 58) having a central portion 36 and edges 24 & 26 (Smith Fig. 2), wind baffles 82 & 84 defining an opening between the central section edges 24 & 26 and the baffles (See Figs. 2,3, & 6), and a plurality of ribs 66 spanning said openings between the edges and baffles. Morris discloses a ridge vent with at least one score line, disclosed as a "cut line" (Figs. 3 & 4 below, Ref. 24), extending across the top panel to "facilitate manual separation" along the line (Column 3 Line 9). The Morris score line is such because it is a notch, scratch, or incision, specifically a cut or perforation in the material. A score line is generally added because it allows an installer to easily and efficiently segment a ridge vent segment to a desired length. Thus, it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to have modified the Smith ridge vent with the score line taught by Morris because it allows an installer to easily and efficiently segment a ridge vent segment to a desired length.

**FIG. 3****FIG. 4**

- b. Claim 2. The Smith/Morris combination discloses a plurality of score lines, referred to as "cut lines", 24 extending across the top panel 18 at spaced intervals in that each pair of segmented portions 22 are separated by a cut line resulting in a spaced plurality (Figs. Above).
- c. Claim 3. The Smith/Morris combination discloses a score line on the underside of the top panel in that the lines are "substantially perforated," thus necessarily formed on both sides of the top panel 18 (Column 3 Line 11).
- d. Claim 4. The Smith/Morris combination discloses all the elements of claim 3 including being configured to fold at the score line and then be torn along the line as a method of separation. Specifically, the Smith/Morris combination discloses a score line, while the examiner notes that it is well known in the art to fold an article at a score line to weaken and thus more easily, and perhaps more accurately, separate the article. Thus, since nothing in the prior art poses an

obstacle to the folding action, the Smith/Morris combination is configured to be folded at the score line and, based on what is known in the art, will likely be folded on the score line for separation.

e. Claim 7. The Smith/Morris combination discloses all the elements of claim 1 including comprising a cutting guide formed in at least one baffle. The examiner notes that a score line is also necessarily a "cutting guide." It would be obvious to one of ordinary skill in the art, at the time the invention was made, to separate the article using an apparatus (e.g. scissors or knife) as an alternative to solely by hand, thus the score line becomes a cutting guide. Furthermore, the combination teaches the score line formed over the entire structure, to facilitate separation of the ridge vent, thus the lines are included on the baffles.

f. Claim 8. The Smith/Morris combination discloses all the elements of claim 7 including wherein the gutting guide comprises a notch (See above claim 7). By definition, a score line may include a notch, scratch, or incision.

g. Claim 9. The Smith/Morris combination discloses all the elements of claim 7 including a cutting guide offset from the score line, such that a lip is formed when the baffle is cut at the cutting guide and the top panel is separated at the score line. As described in claim 2, the combination discloses a plurality of spaced apart lines, specifically described in the claim as score lines. Claim 7 explains examiners reasoning that a "score line" is synonymous with "cutting guide", in this case, for the above reasons. Regarding this claim, every other spaced apart plurality of lines will be construed to be a score line, whereas the

lines separated by score lines are construed to be cutting guides. Furthermore, if the baffle is cut at a cutting line and the top panel is separated at a score line a resulting "lip" is formed since a broad interpretation of "lip" may be construed to include any resulting edge.

h. Claim 10. The Smith/Morris combination discloses all the elements of the invention including wherein the aligned cutting guide is formed in each wind baffle. The Smith/Morris combination discloses a cut line "extending entirely through the blank," (Morris Column 3 Line 11, See also Figs. 3 & 4).

i. Claim 18. Smith discloses a ridge vent with an elongated flexible top panel (Column 2 Line 58) having a central portion 36 and edges 24 & 26 (Smith Fig. 2), wind baffles 82 & 84 defining an opening between the central section edges 24 & 26 and the baffles (See Figs. 2,3, & 6), a plurality of buttresses 105 & 107 extending from the top panel to the baffles, and a plurality of ribs 66 spanning said openings between the edges and baffles.

Morris discloses a ridge vent with at least one tear line, disclosed as a "cut line," extending across the top panel to "facilitate manual separation" along the line (Column 3 Line 9), because it allows an installer to easily and efficiently segment a ridge vent to a desired length. Thus, it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to have modified the Smith ridge vent with a score line taught by Morris because it allows an installer to easily and efficiently segment a ridge vent to a desired length.

The Smith/Morris combination discloses all the elements of claim 18 including comprising a cutting guide formed in at least one baffle. The examiner notes that a score line is also necessarily a "cutting guide," for the reasons stated in the rejection of claim 7. Regarding this claim, every other spaced apart plurality of lines will be construed to be a score line, whereas the lines separated by score lines are construed to be cutting guides.

Claim 21. The Smith/Morris combination teaches all the elements of the invention, including wherein the tear line is a score line formed in the flexible top panel. Morris discloses a ridge vent with at least one score line, disclosed as a "cut line," extending across the top panel to "facilitate manual separation" along the line (Column 3 Line 9). The Morris score line is such because it is a notch, scratch, or incision, specifically a cut or perforation in the material.

5. Claims 5, 6, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (U.S. Patent 5,772,502) in view of Morris (U.S. Patent 5,651,734) as applied to claims 1-4, 7-10, 18, and 21 above, and further in view of Hillstrom (U.S. Patent 6,560,906).

k. Claim 6. The Smith/Morris combination teaches all the features of the invention except the vent further comprising a pair of bending notches formed at either end of the score line. Hillstrom teaches it is well known in the art to include notches 40 at either end of a score line 42 to provide an area of stress concentration that facilitates fracturing (See Hillstrom Column 6 ¶ 1). Thus, it would have been obvious to one having ordinary skill in the art, at the time the

invention was made, to have modified the Smith/Morris combination with notches formed at either end of the score line as taught by Hillstrom to provide an area of stress concentration that facilitates fracturing.

l. Claim 19. The Smith/Morris combination teaches all the features of the invention except further comprising bending notches formed in the edges of the top panel. Hillstrom teaches it is well known in the art to include notches 40 at either end of a score line 42 to provide an area of stress concentration that facilitates fracturing (See Hillstrom Column 6 ¶ 1). Thus, it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to have modified the Smith/Morris combination with notches formed at either end of the score line as taught by Hillstrom to provide an area of stress concentration that facilitates fracturing.

6. Claims 11, 12, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (U.S. Patent 5,772,502) in view of Morris (U.S. Patent 5,651,734) as applied to claims 1-4, 7-10, 18, and 21 above, and further in view of Logan et al. (U.S. Patent 5,491,936).

m. Claims 11 and 20. Smith/Morris combination discloses all the features of the invention except further comprising indicia on the baffle adjacent to the cutting line. Logan et al. teaches it is known in the art to use "cut here" indicia adjacent to a cut line to provide a quick and easy reference to installers. Thus, it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to have modified the Smith/Morris combination with indicia

adjacent to the cut line as taught by Logan et al. on the baffles to provide a quick and easy reference for installers.

n. Claim 12. The Smith/Morris/Logan combination teaches all the elements of the invention except specifically placing the indicia on the top lip of the baffles. Smith discloses a wind baffle formed with a top lip 82 & 84 (Smith Figs. 2,3, & 6) whereon it would be obvious to place the cut indicia. The indicia placement would be obvious because the top lip of the baffle is the outermost edge of the apparatus and thus, the most logical point to begin separation of the articles. Obviously, cutting instructions would provide the most benefit at the onset of separation as opposed to after a cut has been made.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Robinson et al. (U.S. Patent 6,684,581) teaches a cutting guide, Van Melle (U.S. Patent 5,613,619) teaches a notch at a score line.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan Eppes whose telephone number is (571) 270-3109. The examiner can normally be reached on M-F; alt. Fri. off (7:30am-5pm EST.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vic Batson can be reached on (571) 272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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Supervisory Patent Examiner
Art Unit 3600

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6/4/07

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